

SUBCHAPTER A—GENERAL PROVISIONS

PART 1500—FUNCTIONS, POWERS AND DUTIES

Subpart A—General Provisions

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Subpart A—General Provisions

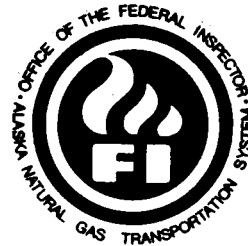
§ 1500.101 Purpose.

This part is intended to provide a general description of the functions, powers, and duties of the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (OFI).

§ 1500.102 Seal.

(a) The OFI has adopted an official seal of which judicial notice shall be taken. Its description is as follows: A blue circle encircled by a blue band with the words "Office of the Federal Inspector, Alaska Natural Gas Transportation System" encircling the blue band. Inside the circle, in white, are the letters "FI". Above the letters are three white symbols representing natural gas flames. The symbols get progressively smaller from left to right.

(b) The Official Seal of the OFI is illustrated as follows:



Subpart B—Creation and Authority

§ 1500.201 Summary.

(a)(1) Congress, in its 1976 legislation clearing the way for the Alaska Natural Gas Transportation System (ANGTS), included the requirement that a Federal Inspector be appointed to assure that the project be built as timely as possible, without excessive cost overruns, and with minimal harm to the environment.

(2) OFI was established pursuant to the Alaska Natural Gas Transportation Act of 1976 (ANGTA), 15 U.S.C. 719; Reorganization Plan No. 1 of 1979, 44 FR 33663 (June 12, 1979); and Executive Order No. 12142, 44 FR 36927 (June 25, 1979).

(b) The Alaska Natural Gas Transportation System (ANGTS) is the statutory designation for the system chosen by the President pursuant to his statutory authority to designate a system for the delivery of Alaska natural gas to the contiguous states. Section 7(a)(4) of ANGTA. The President designated an overland pipeline system beginning at Prudhoe Bay in Northern Alaska, continuing through Alaska into Canada. The system will split in Southern Alberta into eastern and western legs terminating in Dwight, Illinois, and Antioch, California, respectively. The ANGTS will be designed optimally to carry 2.0 to 2.5 billion cubic feet of gas per day, with greater volumes possible. It is more fully described in section 2 of the *Decision and Report to Congress on the Alaska Natural*

Gas Transportation System (Decision) Executive Office of the President, Energy Policy and Planning, issued September 22, 1977.

§ 1500.202 Statutory background.

(a) *The Alaska Natural Gas Transportation Act of 1976 (ANGTA).*

(1) In 1976 ANGTS was given priority status, and thus removed from the standard regulatory process, by ANGTA. The Congressional purpose of ANGTA was twofold: to provide for a sound system-selection decision, involving the President, Congress, and many Federal agencies; and to expedite construction—once a system was selected—through a number of administrative and judicial innovations. One such innovation was the Federal Inspector.

(2) The President was authorized and directed by section 7(a)(5) of ANGTA, 15 U.S.C. 719(e), to appoint either a single officer or a board as Federal Inspector, following issuance of his decision selecting a transportation system. The authorities first envisioned by Congress for the Federal Inspector entail monitoring, as contrasted to actual enforcement. In addition to the authority to establish a joint monitoring agreement with Alaska, to monitor compliance with all Federal laws, to compel submission of information, and to report to the President and Congress, the Federal Inspector was authorized to monitor closely the technical aspects of project planning and execution.

(b) *President's Decision.* (1) In 1977 the President selected the Alcan (since changed to Alaskan Northwest Natural Gas Transportation Company) project, as he issued his *Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision)*, Executive Office of the President, Energy Policy and Planning, issued September 22, 1977. In section 5 thereof, the President determined that, in order to ensure coordinated government oversight, the Federal Inspector must, in addition to the ANGTA authorities (described in paragraph (a) of this section) have "field-level supervisory authority over enforcement of terms and conditions from those Federal agencies having statutory responsibilities over various aspects of (ANGTS)" (*Id.*, at a 41-

42). He concluded, however, that the necessary transfer of authorities would have to await a reorganization plan, which in turn necessitated compliance with the substantive and parliamentary requirements of the Reorganization Act of 1977, 5 U.S.C. 901, *et seq.*

(2) In deferring appointment of the Federal Inspector until after transmitting a reorganization plan to Congress, the President substantially expanded the Federal Inspector concept, from Congress' watchdog to the focus of all enforcement of Federal laws related to ANGTS. Also as part of section 5 of the *Decision*, the President further expanded the Federal Inspector's authority to include pre-approval of the many important planning decisions to be made by the ANGTS sponsors. This took the form of numerous terms and conditions governing construction costs and schedule, safety and design, and environmental protection.

(3) These myriad terms and conditions have the force of law. The President was authorized, by section 7(a)(6) of ANGTA, to include them in his *Decision*. And because the *Decision* in its entirety was given full legal effect, under section 8 of ANGTA by joint resolution, H.J. Res. 621, Pub. L. 95-158, 95th Cong. 1st Sess., these terms and conditions have in essence become statutory in nature.

(c) *Reorganization Plan and Executive Order.* (1) In 1979 the OFI was actually established, and the necessary transfer of authorities accomplished through, Reorganization Plan No. 1 of 1979. First, the OFI was transferred "exclusive responsibility for enforcement of all Federal statutes relevant in any manner to preconstruction, construction, and initial operation" of ANGTS, section 102 of the Reorganization Plan. The OFI is to enforce the legal requirements of many Federal agencies. The Environmental Protection Agency (EPA), the Army Corps of Engineers (COE), Department of Transportation (DOT), Department of Energy (DOE), Federal Energy Regulatory Commission (FERC), Department of the Interior (DOI), Department of Agriculture (USDA), and Department of the Treasury (Treasury), and their respective

legal authorities, are specifically enumerated as the most likely to be enforced by the OFI relative to ANGTS. The OFI was also charged with enforcing the terms and conditions found in section 5 of the *Decision*, as well as fulfilling the monitoring duties set for the Federal Inspector in section 7(a)(5) of ANGTA and the supplemental enforcement duties found in section 11 of ANGTA.

(2) Enforcement and monitoring constitute only part of the OFI's authority under the Reorganization Plan. Under section 202(b), for example, the OFI is to coordinate and expedite the permitting activities of the Federal agencies. This is a permit-scheduling function.

(3) Under section 202(a) final enforcement actions of the OFI are subject to judicial review only under section 10 of ANGTA. Thus, complaints must be filed with the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the challenged final OFI action. Review is then expedited (90 days) and of limited scope.

(4) The Reorganization Plan became effective as of July 1, 1979, as per Executive Order 12142. And with the Executive Order, the OFI officially came into existence.

Subpart C—Function and Duties

§ 1500.301 Summary.

Through the combination of authorities described in § 1500.202, the OFI oversees every aspect of ANGTS planning and execution. For ease of understanding, these functions (and the underlying legal authorities) are enumerated under five major groupings: general monitoring and oversight (§ 1500.302); scheduling of permits and other governmental authorizations (§ 1500.303); review and approval of systems, plans, and design during planning (§ 1500.304); cost control (§ 1500.305); and enforcement of Federal statutes and related terms and conditions (§ 1500.306).

§ 1500.302 General monitoring and oversight.

Monitoring and oversight entails the following OFI functions:

(a) *Coordinating enforcement with Alaska.* The OFI is to establish a "joint sur-

veillance and monitoring agreement" with the State of Alaska (section 7(a)(5)(A) of ANGTA). In this way Federal and State enforcement efforts can be coordinated, to avoid conflicts and to enhance efficiency. The OFI may also work jointly on compliance with the Lower 48 states traversed by ANGTS.

(b) *Monitoring compliance with Federal laws.* The OFI is to monitor compliance with applicable Federal laws and terms and conditions of the many Federal permits and other authorizations issued for ANGTS (section 7(a)(5)(B) of ANGTA). This includes compliance with the terms and conditions attached to the authorizations.

(c) *Monitoring for effective planning.* The OFI is to "monitor actions taken to assure timely completion of construction schedules and the achievement of quality of construction, cost control, safety, and environmental protection * * *" (section 7(a)(5)(C) of ANGTA). The breadth of this monitoring function requires that the OFI follow the various aspects of project planning and execution.

(d) *Reporting to Congress and the President.* One purpose of the monitoring function is to provide the information for the OFI's current and periodic reports to Congress and the President on the status of ANGTS progress (section 7(a)(5)(E) of ANGTA). In this regard, the OFI publishes a quarterly report on the status of ANGTS (section 7(a)(5)(E) of ANGTA). This is available to the public upon request.

§ 1500.303 Permit scheduling and coordination.

(a) The Reorganization Plan differentiates between permitting (so-called "nonenforcement") and enforcement, only the latter function being transferred to the OFI. Nevertheless, the OFI is responsible for coordinating and expediting the issuance of permits and other authorizations by the Federal agencies. Section 9(a) and (b) of ANGTA, and Section 202(b) of the Reorganization Plan. OFI coordination can, for example, take the form of "requiring submission of scheduling plans for all permits;" and "serving as the 'one window' point for filing for and issuance of all necessary permits" and

data requests. Section 202(b) of the Reorganization Plan.

(b) This coordination function goes beyond mere permit scheduling. It also involves the OFI, pursuant to Section 202(b) of the Reorganization Plan, in evaluating the many discretionary terms and conditions which each Federal agency may impose on ANGTS, to assure that they do not impair project expedition, as per Section 9(c) of ANGTA.

§ 1500.304 Approval of systems, plans, and design.

All significant systems, plans, and design are subject to OFI scrutiny, as a precondition to commencement of construction (Section 5 of the *Decision* and Section 102(h)(3) of the Reorganization Plan). Without listing every approval requirement, the following are the most significant:

(a) *Management plans.* Prior to final certification, the ANGTS applicants must provide a "detailed overall management plan" for OFI approval (Section 5 of the *Decision*, Condition I.1.). Thus, at the outset the applicant's overall strategy for executing the project will be scrutinized.

(b) *Execution contracts.* Several aspects of the contracts with execution contractors (the prime contractor for any given pipeline spread) must be approved by the OFI (Section 5 of the *Decision*, Conditions I.2, I.3, I.7, and I.8). These include contract form (if other than fixed-price), bonding and other prequalification requirements, labor relations procedure, and dispute procedures.

(c) *Cost and schedule control.* The applicants must provide the OFI with detailed "cost and schedule control techniques" (*Id.*, Condition I.4.). This entails, for example, manpower, material, logistical, and equipment planning.

(d) *Operating strategies.* The OFI must approve the applicants' operating strategies. Equipment supply, repair facilities, and spare-part inventories are among the items to be reviewed (*Id.*, Condition I.6.).

(e) *Design review.* The OFI's technical oversight is manifested most in approving the "final design, design-cost estimate, and construction schedule" for the ANGTS applicants (*Id.*, Condition

I.5.). Because construction may not start until final design is approved, this review is perhaps the OFI's primary means for assuring proper design and planning, as well as assuring the reasonableness of the design-cost estimate.

(f) *Quality control and assurance.* The OFI must approve the procedures proposed for quality control and quality assurance during construction (*Id.*, Condition I.9.). Apart from these procedures, the OFI must approve technical construction specifications and seismic monitoring systems, to assure pipeline safety and integrity of design, as well as approve plans to assure environmental protection (*Id.*, Safety and Design Conditions II.2 and II.6; Environmental Condition III.2.).

(g) *Procurement review.* As part of the bilateral agreement with Canada relative to ANGTS, the OFI, along with the Northern Pipeline Agency in Canada, is charged with endeavoring "to ensure that the supply of goods and services to (ANGTS) will be on generally competitive terms" (*Decision*, Section 7, paragraph 7(a)). Because sanctions for violation include reopening bids, procurement review occurs during the planning process, not after-the-fact. This review is accomplished through detailed reciprocal procedures, which were established by a "diplomatic exchange of notes" and subsequently given regulatory approval by the FERC.

§ 1500.305 Cost control.

In addition to the cost-control purpose and effect of monitoring (§1500.302) and systems approval (§1500.304), the OFI has additional and more direct cost-control functions.

(a) The Incentive Rate of Return, developed by the Federal Energy Regulatory Commission (FERC), is to be administered by the OFI during planning and construction, *Determination of Incentive Rate of Return*, Order No. 31, Docket No. RM78-12, issued June 8, 1979. The OFI will rule on design changes prior to its approval of the final design during planning and construction (*Determination of Incentive Rate of Return*, Order No. 31, Docket No. RM78-12, issued June 8, 1979. The OFI

cost estimate and on scope changes during construction).

(b) both by transfer of enforcement functions under Section 102(d) of the Reorganization Plan, and also by delegation from the FERC pursuant to Section 202(b) of the Reorganization Plan, 45 FR 85511 (December 29, 1980), the OFI will audit expenditures for rate base formation and accounting compliance. This audit must be performed on a timely basis during construction (Section 5 of the *Decision*, Finance Condition IV.2.).

§ 1500.306 Enforcement of Federal laws.

(a) The OFI's enforcement function extends to "all Federal statutes relevant in any manner to pre-construction, construction, and initial operation" of ANGTS. Section 102 of the Reorganization Plan. This transfer includes, but is not limited to, the enforcement functions of the following agencies:

(1) *The Environmental Protection Agency*. Such enforcement functions of the Administrator and others related to compliance with:

(i) National Pollutant Discharge Elimination System permits (Section 402 of the Clean Water Act of 1977 (CWA)). These permits are required for the discharge of pollutants into waters of the U.S.

(ii) Spill prevention, containment, and countermeasure plans (Section 311 of CWA). These plans are required for major nontransportation oil storage at camps and other facilities.

(iii) Review of permits issued by the Corps of Engineers for dredged and fill materials (Section 404 of CWA). These permits are required for the discharge of dredged or fill material into waters of the U.S.

(iv) New Source Performance Standards (Section 111 of the Clean Air Act). Enforcement of standards of performance for new stationary sources of air pollution such as stationary gas turbines and incinerators.

(v) Prevention of Significant Deterioration review and approval (Sections 160–169 of the Clean Air Act). Review of construction or modification of most stationary air emission sources which

emit over 100 tons per day of any air pollutant.

(vi) Resource Conservation and Recovery permits (Resource Conservation and Recovery Act of 1976). Enforcement of permits for disposal or chemical destruction of hazardous wastes.

(2) *The U.S. Army Corps of Engineers*. Such enforcement functions of the Secretary of the Army and others related to compliance with:

(i) Dredged and fill material permits (Section 404 of CWA). Enforcement of permits regulating the discharge in waters of the U.S. of dredged materials and pollutants that comprise fill material.

(ii) Permits for structures in navigable waters (Section 10 of Rivers and Harbors Appropriation Act of 1899). Enforcement for permits for structures, including piers, break waters, bulkheads, revetments, power transmission lines, and aids to navigation, as well as for certain work performed in navigable waters.

(3) *The Department of Transportation*. Such enforcement functions of the Secretary of Transportation and others related to compliance with:

(i) The Natural Gas Pipeline Safety Act of 1968 and related regulations. This entails a comprehensive oversight program to assure quality of construction and pipeline integrity.

(ii) The Federal Aviation Act and related authorizations and regulations, such as, proposed private airport facilities, air traffic limitations, and height requirements for structures like microwave transmitter towers.

(iii) Permits for bridges across navigable waters (Section 9 of Rivers & Harbors Appropriation Act of 1899).

(4) *The Department of Energy and the Federal Energy Regulatory Commission*. Such enforcement functions of the Secretary of Energy, the Commission and others related to compliance with:

(i) Certificates of public convenience and necessity (Section 7 of the Natural Gas Act).

(ii) Authorizations for importation of natural gas, including gas imported from Alberta as predeliveries of Alaska gas (Section 3 of the Natural Gas Act). Enforcement of requirements for facilities necessary to transport this gas.

(5) *The Department of the Interior.* Such enforcement functions of the Secretary of the Interior and others related to compliance with:

(i) Grants of rights-of-way and temporary use permits for Federal lands (Section 28 of Mineral Leasing Act). These grants and permits include those for gas pipelines and related facilities on Federal lands, as well as those for related temporary uses, such as campsites, roads, communications and monitoring sites.

(ii) Land use permits for temporary use of public lands and other associated land uses (Section 302, 501, and 503-511 of the Federal Land Policy and Management Act of 1976). These permits provide authority for temporary use of Federal lands in addition to the authority under the Mineral Leasing Act and include permits for field work preparatory to applying for grants of right-of-way and other associated uses.

(iii) Materials sales contracts (the Materials Act of 1947). These permits concern the removal of mineral or vegetative material from public lands.

(iv) Rights-of-way across Indian lands (Rights of Way Through Indian Lands Act). Grants of rights-of-way issued by the Secretary after tribal consent.

(v) Removal permits (the Materials Act of 1947). These permits also concern removal of mineral or vegetative material from public lands.

(vi) Approval to cross national wildlife refuges (National Wildlife Refuge System Administration Act of 1966 and Upper Mississippi River Wildlife and Fish Refuge Act). Issuances of permits or rights-of-way or permits on wildlife refuges must have Interior approval as being compatible with the purpose for establishing the refuge.

(vii) Wildlife consultation (Fish and Wildlife Coordination Act). Requirement for consultation with Fish and Wildlife Service as to the effects of rights-of-way or permits on wildlife resources.

(viii) Protection of certain birds (Migratory Bird Treaty Act and Bald and Golden Eagles Protection Act). Interior is responsible for protecting migratory birds and eagles, their nests and eggs. Special use permits or waivers are available except in the case of eagles.

(ix) Review of Corps of Engineers' dredged and fill material permits (Section 404 of CWA). See similar discussion under paragraph (a) of this section, EPA, and paragraph (b) of this section, the Corps.

(x) Rights-of-way across recreation lands (Land and Water Conservation Fund Act of 1965). Compliance with restrictions for land acquired or developed with the assistance of the Fund.

(xi) Historic preservation (National Historic Preservation Act of 1966). Principally consultation on the effect of system activities on locations covered by the Act.

(xii) Permits issued under the Antiquities Act of 1906. Such permits allow certain institutions to examine ruins, to excavate archeological sites and to gather objects of antiquity on or from Federal lands.

(xiii) System activities requiring coordination and approval under the general authorities of:

(A) The National Trails System Act,

(B) The Wilderness Act,

(C) The Wild and Scenic Rivers Act,

(D) The National Environmental Policy Act of 1969,

(E) The Act of April 27, 1935, dealing with the prevention of soil erosion, and

(F) An Act to provide for the Preservation of Historical and Archeological Data.

The enforcement functions under these Acts generally concern requirements that the purposes and protection set forth in the Act be observed, or, depending on the specific statute, at least be taken into account, in the performance of system activities.

(xiv) Equal opportunity regulations published by the Department. 43 CFR Part 34. These regulations require affirmative action to assure against discrimination in employment and contracting on ANGTS. Section 17 of ANGTA.

(6) *The Department of Agriculture.* Such enforcement functions of the Secretary of Agriculture or other related to compliance with:

(i) Associated land use permits under grants of rights-of-way across Federal lands (Section 28 of the Mineral Leasing Act of 1920). Similar permits to those of Interior above except for lands administered by USDA.

(ii) Land use permits for associated land uses (Section 501 and 503–511 of Federal Land Policy and Management Act of 1976). Similar permits to those of Interior above except for lands administered by USDA.

(iii) Land use permits under the Organic Administration Act of June 4, 1897 and Title III of Bankhead-Jones Farm Tenant Act of 1937. Permits for land use of a non right-of-way nature for National Forest System lands (under the first Act) and National Grasslands (under the second Act).

(iv) Removal of materials under the Materials Act of 1947. Similar permits to those of Interior above except for lands administered by USDA.

(v) Removal of objects of antiquity (Antiquities Act of 1906). Similar permits to those of Interior above except for lands administered by USDA.

(vi) Construction and utilization of national forest roads (Roads and Trails System Act of 1964). Permanent or temporary easements issued for such roads.

(vii) System activities requiring coordination and approval under the general authorities of:

(A) The National Forest Management Act of 1976;

(B) The Multiple Use Sustained-Yield Act of 1960;

(C) The Forest and Rangelands Renewable Resources Planning Act of 1974;

(D) The National Trails System Act;

(E) The Wilderness Act;

(F) The Wild and Scenic Rivers Act;

(G) The Land and Water Conservation Fund Act of 1965;

(H) The Clean Water Act of 1977;

(I) The Fish and Wildlife Coordination Act;

(J) The Fish and Game Sanctuaries Act;

(K) The National Historic Preservation Act of 1966;

(L) An Act to provide for the preservation of Historical and Archeological Data;

(M) The National Environmental Policy Act of 1969;

(N) The Watershed Protection and Flood Prevention Act;

(O) The Soil and Water Conservation Act of 1977; and

(P) The Act of April 27, 1935, dealing with prevention of soil erosion.

The enforcement functions under these acts generally concern requirements that the purposes and protections set forth in the acts be observed, or, depending on the specific statute, at least be taken into account, in the performance of system activities.

(7) *The Department of the Treasury.* Such enforcement functions of the Secretary of the Treasury and others related to compliance with permits and regulations for interstate transport or storage of explosives.

(8) *The Department of Labor.* Pursuant to memorandum of understanding, coordination of functions to assure compliance with:

(i) The Federal Mine Safety and Health Act of 1977, and

(ii) The Occupational Safety and Health Act of 1970.

Regulations promulgated pursuant to these acts are intended to reduce lost work time resulting from workplace injuries and illnesses.

(b) The specific statutes and regulations listed above span the full spectrum of Federal regulatory law. Be they concerned with environmental protection, pipeline integrity, public convenience and necessity, or public land use, these statutes, and the resulting regulations, permits, and terms and conditions, require the OFI to oversee every aspect of ANGTS construction.

PART 1502—ORGANIZATION

Sec.

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AUTHORITY: Alaska Natural Gas Transportation Act, 15 U.S.C. 719; *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, Executive Office of the President, Energy Policy and Planning, issued September 22, 1977; Reorganization Plan No. 1 of 1979, 44 FR 33663 (June 12, 1979); Executive Order 12142 of June 21, 1979, 44 FR 36927 (June 25, 1979); and 5 U.S.C. 552(a)(1).